

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

APPELLANT: JOANNES GREGORIUS BREMER EXAMINER: SAMIR M. SHAH
SERIAL NO.: 10/537,878 ART UNIT: 2856
FILED: JUNE 7, 2005 CONFIRMATION NO.: 8410
FOR: ACTIVITY MONITORING

REPLY BRIEF

Mail Stop **Appeal Brief - Patents**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant herewith respectfully presents a Reply Brief on Appeal as follows:

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1. REAL PARTY IN INTEREST

The real party in interest is the assignee of record U.S. Philips Corporation, a Delaware corporation having an office and a place of business at 1251 Avenue of the Americas, New York, NY 10020-1104.

2. RELATED APPEALS AND INTERFERENCES

Appellant and the undersigned attorney are not aware of any other appeals or interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

3. STATUS OF CLAIMS

A statement of the status of claims is contained in the Appeal Brief filed
October 15, 2007.

4. STATUS OF AMENDMENTS

A statement of the status of amendments is contained in the Appeal Brief filed
October 15, 2007.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER

A summary of the claimed subject matter is contained in the Appeal Brief filed
October 15, 2007.

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal is contained in the Appeal
Brief filed October 15, 2007.

7. ARGUMENT

In the present application as originally filed, independent claim 1 as recited “characterized in that the activity monitor is operable to monitor and process the sensor signals discontinuously in time”, claim 4 depending from claim 1 recited “wherein the processor is operable to monitor the sensor signals in turn”, independent claim 9 recited “characterized in that the sensor signals are monitored and processed discontinuously in time”, and claim 13 depending from claim 9 recited “wherein the sensor signals are monitored in turn”.

During the patent examination of the present application, claims 1, 4, 9 and 13 had to be given their broadest reasonable interpretation consistent with the specification. This means that the words of claims 1, 4, 9 and 13 had to be given their plain meaning unless the plain meaning is inconsistent with the specification. See, MPEP 2111.

The Appellant respectfully asserts that the plain meaning of the claim limitation “discontinuously in time” as recited in independent claims 1 and 9 and consistent with the specification comprises interruptions, pauses, breaks or the like in the monitoring and processing of the sensor signals. An example of “discontinuously in time” is a switching of an activity monitor between a monitoring mode and a standby mode as encompassed by dependent claims 5-8 and 10-12.

Furthermore, the Appellant respectfully asserts that the plain meaning of claim limitation “in turn” as recited in dependent claims 4 and 13 and consistent with the specification comprises a sequentially ordered non-overlapping monitoring of the sensors

(e.g., a time-division monitoring of the sensors). In other words, the plain meaning of the limitation “in turn” encompasses the sensor signals are monitored one after the other (i.e., in due order of succession).

In response to a Non-Final Office Action dated November 29, 2006, in which the grounds for rejection of this appeal were first asserted by Examiner Shah, the Appellant cancelled dependent claims 4 and 13, and amended independent claims 1 and 9 to include the respective subject matter of cancelled claims 4 and 13. The reason for these amendments was the recognition by the Appellant that (1) the art of record did teach “characterized in that the activity monitor is operable to monitor and process the sensor signals discontinuously in time” as recited in independent claim 1, and “characterized in that the sensor signals are monitored and processed discontinuously in time” as recited in independent claim 9, and (2) the art of record failed to teach and actually taught away from “and the processor is operable to monitor the sensor signals in turn” as currently recited in independent claim 1 and “and the sensor signals are monitored in turn” as currently recited in independent claim 9.

In the Examiner’s Answer dated February 1, 2008, Examiner Shah initially admits the limitation “in turn” has an interpretation of “one after the other” that is within the scope of the plain meaning of “in turn”. See, the Examiner’s Answer at page 9, fourth paragraph. Furthermore, in the Argument section of the Appeal Brief filed October 15, 2007, the Appellant unequivocally demonstrates that *Depeursinge*, *Choi* and *Verpaletste* fail to teach and in fact teach away from monitoring their respective sensor signals in turn

within the plain meaning of the limitation “in turn”. However, in order to support the claim rejections in view of *Depeursinge*, *Choi* and *Verpaletste*, Examiner Shah did not directly address the teachings of *Depeursinge*, *Choi* and *Verpaletste* in detail as related to the limitation “in turn”, but instead provided erroneous assertions as to the claim interpretation of independent claims 1 and 9.

First, as to *Depeursinge* and *Choi*, Examiner Shah erroneously asserts that neither of the independent claims 1 and 9 disclosed each/all sensor signals being monitored/processed discontinuously or in turn. See, the Examiner’s Answer at page 10, first paragraph of *Depeursinge*, and at page 11, the paragraph of *Choi*. This broad interpretation of independent claims 1 and 9 is unreasonable, because (1) the limitation “sensor signals” is recited consistently within independent claims 1 and 9 as a group of signals and not as individual signals, and (2) the plain meaning of the limitation “in turn” as evidenced herein implies a group of two or more signals are monitored one after the other. Thus, Examiner Shah’s erroneous assertion can not be used to overcome the failure to teach and the teaching away by *Depeursinge* and *Choi* of a monitoring of two or more signals one after the other.

Second, as to *Verpaletste*, Examiner Shah erroneously asserts that the Appellant relied upon a feature of a time-division monitoring of the sensors that is not recited in independent claims 1 and 9. However, a careful review of the Argument section of the Appeal Brief corresponding to *Verpaletste* reveals the fact that the Appellant provided the time-division monitoring of the sensors as an example of “in turn” within the plain

meaning of “in turn” that is consistent with the specification. As such, it is erroneous for Examiner Shah to assert the Appellant is relying on an example of “in turn” within the plain meaning of “in turn” when in fact the Appellant is relying on the plain meaning of “in turn” to demonstrate the teaching away by *Verpaletste* of a time division monitoring of the sensor signals or any other technique for monitoring sensor signals one after the other.

In Summary, the Appellant respectfully asserts that the art of record unequivocally fails to teach and in fact teaches away from monitoring sensor signals in turn within the scope of claims 1-3 and 5-12, and the erroneous claim interpretation assertions by Examiner Shah can not overcome this failure by the art of record. Thus, the Appellant respectfully submits that claims 1-3 and 5-12 as listed in the appendix herein fully satisfy the requirements of 35 U.S.C. §§102, 103 and 112. In view of the foregoing, favorable consideration and passage to issue of the present application is respectfully requested.

Dated: **April 1, 2008**

Respectfully submitted,

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CLAIMS APPENDIX

1. An activity monitor comprising:

a measurement unit including a plurality of motion sensors operable to produce respective sensor signals indicative of motion experienced thereby; and

a processor operable to receive the sensor signals from the measurement unit and to process the sensor signals in accordance with a predetermined method,

characterized in that the activity monitor is operable to monitor and process the sensor signals discontinuously in time and the processor is operable to monitor the sensor signals in turn.
2. An activity monitor as claimed in claim 1, wherein the measurement unit is operable to output the sensor signals discontinuously in time.
3. An activity monitor as claimed in claim 1, wherein the processor is operable to monitor the sensor signals discontinuously in time.
5. An activity monitor as claimed in claim 1, wherein the processor is operable to enter a monitoring mode of operation in which the processor monitors the sensor signals and to enter a standby mode of operation in which no monitoring takes place.

6. An activity monitor as claimed in claim 5, wherein the processor is operable to enter the monitoring mode and the standby mode alternately.
7. An activity monitor as claimed in claim 6, wherein respective time periods for the monitoring and standby modes are variable.
8. An activity monitor as claimed in claim 6, wherein respective time periods for the monitoring and standby modes are fixed.
9. A method of monitoring activity using a plurality of motion sensors which are operable to produce respective sensor signals indicative of motion experienced thereby, the method comprising receiving the sensor signals and processing the sensor signals in accordance with a predetermined method, characterized in that the sensor signals are monitored and processed discontinuously in time and the sensor signals are monitored in turn.
10. A method as claimed in claim 9, comprising alternately monitoring the sensor signals and operating in a standby mode, in which no monitoring takes place, for respective time periods.

11. A method as claimed in claim 10, wherein the respective time periods are variable.
12. A method as claimed in claim 10, wherein the respective time periods are fixed.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.